

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

McGRAW HILL, INC.
(Petitioner)
Care of R. E. Harrington, Inc.

PRECEDENT
TAX DECISION
No. P-T-364
Case No. T-77-13

Employer Account No.

DEPARTMENT OF BENEFIT PAYMENTS

Office of Appeals No. S-T-9087

The petitioner has appealed from the decision of the administrative law judge dismissing its petition for review under Unemployment Insurance Code section 1035.

STATEMENT OF FACTS

On June 18, 1976 the Department of Benefit Payments sent written notice to the petitioner of its denial of the petitioner's protest of a charge to its reserve account number 016-2180. In the last paragraph of the denial of the protest, the Department stated that:

"If you do not agree with our determination, you may file a petition for review within 30 days from the date of this letter. An original and one copy of your petition must be filed. The petition need not be formal but it must state the grounds or reasons on which it is based. Address your petition to the California Unemployment Insurance Appeals Board, 714 P Street, Sacramento, California 95814."

In response to the denial of its protest, the petitioner sent a letter to the Department's Accounting Bureau. The letter was dated September 21, 1976 and was received on September 27, 1976 in an envelope bearing a postage meter stamp of September 22, 1976. It was forwarded to the Appeals Board where it was received on September 28, 1976.

In order to afford the petitioner the greatest possible preservation of its rights to an administrative review of the denial of its protest, the administrative law judge treated the petitioner's letter as a petition for review filed under Unemployment Insurance Code section 1035. The petitioner was invited to set forth any circumstances which might constitute good cause for its failure to file the petition within the first 30 days after the denial of its protest. The petitioner responded to this invitation with a letter setting forth various reasons which the administrative law judge found not to be good cause for the delay in filing, and accordingly dismissed the petition.

The issue presented is whether the dismissal of the petition was proper.

REASONS FOR DECISION

Unemployment Insurance Code section 1035 establishes a procedure for the administrative review of a departmental denial of an employer's protest of a charge to its reserve account. This procedure is similar to that established by code sections 1133 and 1134 for the administrative review of a departmental assessment of taxes (see Appeals Board Decision No. P-T-23). Since the issuance of Appeals Board Decision No. P-T-23, the Legislature has changed the rules for calculating time, where the notice of the reviewable administrative action is given by mail. The courts have also given further elucidation of the meaning of "good cause."

A petition for review under code section 1035 may be filed within 30 days after notice of denial of the protest has been given to the employer. If the petition is not filed within that time, an additional 30 days for the filing of the petition may be granted upon a showing of "good cause." There is no provision for an extension beyond these two periods. We shall consider herein how the time limits for those two periods are calculated and, in doing so, whether the administrative law judge had jurisdiction to consider the protest.

The calculation of time periods is prescribed in the Government Code and Code of Civil Procedure.

Government Code section 6800 states:

"The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded."

Hence, we exclude the date the denial was made and begin our calculation with June 19, 1976. The thirtieth day thereafter is July 18, 1976, a Sunday. Sundays are holidays (see Government Code sections 6700-6702), and Government Code section 6707 provides:

"When the last day for filing any instrument or other document with a state agency falls upon a Saturday or holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed."

Even though the next business day would be Monday, July 19, 1976, the first appeal period, for reasons outlined later, is extended an additional ten days. Section 1038 of the Unemployment Insurance Code provides that the provisions of section 1013 of the Code of Civil Procedure (CCP) apply with regard to, among other provisions, petitions in tax matters. Section 1013 of the Code of Civil Procedure, in part, provides:

". . . service is complete at the time of the deposit, but if, within a given number of days after such service, a right may be exercised, or an act is to be done by the adverse party, the time within which such right may be exercised or act be done, is extended five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States, . . ."

In the present case, the denial was mailed to the petitioner in Ohio. Accordingly, the first period was extended an additional 10 days.

If the petition were filed on or before July 29, 1976, it would be timely without a necessity of showing good cause. The petition could still be heard if it were filed within the second 30-day period and if the petitioner established "good cause" for the failure to act on or before July 29, 1976.

We now turn our attention to the calculation of the second period, i.e., the period in which the petition may be filed upon a showing of good cause.

The thirtieth day after July 29 falls on a Saturday, August 28, 1976. Even though a Saturday is only a holiday from noon on, Government Code section 6707 extends the time to petition to the next business day, which in this case is August 30, 1976, a Monday.

The petition was dated September 21, metered on September 22, and received on September 27. Thus, action was taken after the expiration of both periods, and the petition may not be considered whatever the cause for delay.

In summary, the following method should be used for determining time limitations upon filing a tax petition to an administrative law judge:

1. Calculate the basic 30 days allowed by the Unemployment Insurance Code.
2. Add extra days for terminal Saturdays and holidays in accordance with Government Code sections 6707 and 6800.
3. Add a mailing extension as provided by Code of Civil Procedure section 1013.
4. Add extra days for terminal Saturdays and holidays resulting from the mailing extension.

If the petition is filed within the date established by these four steps, it is timely. If not, continue the calculation as follows:

5. Add the additional 30 days allowed by the Unemployment Insurance Code.
6. Add extra days for terminal Saturdays and holidays in accordance with Government Code sections 6707 and 6800.

If the petition is filed within the later date established by steps 5 and 6, it should be heard if there was good cause for the delay in filing. If the petition is filed after the date established when step 6 is completed, it cannot be heard at all unless the Department is estopped. Appendix "A" will illustrate this method of calculation as applied to the case at hand.

DECISION

The decision of the administrative law judge is affirmed.

Sacramento, California, August 2, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT

APPENDIX "A"

CALCULATION OF FILING TIME

SUN	MON	TUE	WED	THU	FRI	SAT
<u>JUNE</u>						
D = Date of mailing of notice of denial of protest					D 18	1 19
2 20	3 21	4 22	5 23	6 24	7 25	8 26
9 27	10 28	11 29	12 30			
<u>JULY</u>						
HX = Holiday exclusion - G.C. sec. 6800/6700				13	14	15
M = Mailing extensions - C.C.P. 1013				1	2	3
16 4	17 5	18 6	19 7	20 8	21 9	22 10
23 11	24 12	25 13	26 14	27 15	28 16	29 17
HX 18	30 19	M1 20	M2 21	M3 22	M4 23	M5 24
M6 25	M7 26	M8 27	M9 28	M10 * 29	A1 30	A2 31
<u>AUGUST</u>						
A3 1	A4 2	A5 3	A6 4	A7 5	A8 6	A9 7
A10 8	A11 9	A12 10	A13 11	A14 12	A15 13	A16 14
A17 15	A18 16	A19 17	A20 18	A21 19	A22 20	A23 21
A24 22	A25 23	A26 24	A27 25	A28 26	A29 27	A30 28
SX 29	SX ** 30	L1 31	A = Addl. 30-day period f/good cause-UIC 1035 SX = Saturday filing extension - G.C. 6707			
<u>SEPTEMBER</u>						
L = Late days.			L2 1	L3 2	L4 3	L5 4
L6 5	L7 6	L8 7	L9 8	L10 9	L11 10	L12 11
L13 12	L14 13	L15 14	L16 15	L17 16	L18 17	L19 18
L20 19	L21 20	L22 *** 21	L23 22	L24 23	L25 24	L26 25
L27 26	L28 27	L29 28	*Last day to file of right **Last day to file with good cause ***Filing date			